Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Introduction

This hearing convened on September 20, 2024 as the result of the cross applications (application) of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The Tenant applied for compensation for a monetary loss or other money owed and recovery of the filing fee.

The Landlord applied for compensation for a monetary loss or other money owed, a monetary order for unpaid rent, compensation for alleged damage to the rental unit by the tenant, and recovery of the filing fee.

The September 20, 2024, hearing was adjourned, and reconvened on December 12, 2024, and was adjourned. The final hearing occurred on January 21, 2025.

Interim Decisions were issued after the two adjourned hearings, which are incorporated by reference and should be read in conjunction with this Decision.

Those listed on the cover page of this decision attended all hearings, and apart from legal counsel (counsel), all were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The parties confirmed receipt of the other's application and proceeding package and their evidence.

At all hearings before me, the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make their submissions.

Preliminary Issue

Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 6.12 notes that the RTB may use recordings for quality assurance and training purposes. It does not set out that recordings are to be used as evidence in other proceedings.

In addition, when Requesting a Hearing Recording, the Declaration signed by the party states the purpose of making the audio recording available to the party is to help them better understand what transpired at a hearing and make an informed decision if they are considering bringing a judicial review of an arbitrator's decision or order. The parties must agree that the recording will only be used for these purposes. As the recording from a previous hearing was submitted as evidence at this hearing. I find this is a failure of the declaration of the party as they are not permitted to use if for this purpose.

For this reason, I have not listened to the recording of a prior RTB hearing filed by the Tenant. However, the points in the prior hearing were referred to in other evidence.

Issue(s) to be Decided

Is the Tenant entitled to compensation for a monetary loss or other money owed from the Landlord and recovery of the filing fee?

Is the Landlord entitled to compensation for a monetary loss or other money owed, for alleged damage to the rental unit and unpaid rent, and recovery of the filing fee?

Background and Evidence

I have reviewed the abundant amount of oral and written submissions, all evidence, including the testimony of the parties and will refer only to what I find relevant for my decision. However, not all details of the parties' respective submissions and/or arguments made in the 250-minute hearing will be reproduced in this Decision.

The tenancy began on June 1, 2019 and ended on June 30, 2024. As indicated in evidence, the tenancy ended when the Landlord was awarded an order of possession of the rental unit through dispute resolution in a Decision of February 13, 2024, a file noted on the cover page of this Decision, file number ending in 7738.

I have reviewed the Decisions listed on the cover page because both parties referred to past disputes in testimony and evidence. The purpose of my review was to determine if any matters before me in these disputes had been previously decided by another arbitrator. I note that much of the testimony and evidence provided by the parties have been recounted in prior disputes, but I find that the matter of compensation for both parties has not been decided.

Tenant's application

The Tenant's monetary claim of $22,806, is described in their application as follows:

> *Requesting compensation for loss of facilities. 30% of rental suite was inaccessible for a year due to the landlord's refusal to complete repairs. (30% x 1810) x 12 = $6,516 Requesting compensation for loss of quiet enjoyment. Landlord interrupted QE with constant harassment and abuse toward tenant & daughter, including several invalid eviction notices. Landlord conducted unsafe, unnecessary repairs of rental unit & yard. Harassment caused tenant constant anxiety. (75% x 1810) x 12 = 16,290*

The Tenant filed a 117 page submission and evidence package.

Preliminarily, the Tenant and advocate were asked about their claim. The advocate explained that the claim for 30% was due the loss of use of a bedroom and storage. The 75% claim was due to the constant threat of eviction.

The Tenant confirmed they did not have tenant insurance and never filed an application for emergency repairs, or any other reason. Further they lost the use of one bedroom for a year and that it was the Tenant who approached the Landlord about the mold issue.

The evidence package included a chronological accounting of events of June 2023, some of which included the following:

On June 14, 2023, the water tank broke and caused flooding in the basement unit, the Tenant called the Landlord and asked the location of the water valve to turn off the water. The Landlord removed the water tank and replaced it with two new ones that afternoon.

On June 15, 2023, OnSide Restoration (OnSide) attended the rental unit and took samples and set up three dehumidifiers. On June 20, 2023 the Landlord notified the Tenant that the restoration company would come on June 23, 2023 to remove flooring. On June 23, the contractors arrived, but did not enter due to the Tenant being in a deep sleep. The contractors were not prevented from entering.

The Tenant moved many of her belongings outside and into their bedroom.

Following the summary of the events in June 2023, the Tenant's written accounting of events was provided for context to the remaining months of the tenancy.

The Tenant wrote that they grabbed towels to soak up the water, and that they could already see that everything in the foyer, which was their storage area, was mostly ruined. The Tenant wrote the carpet was ruined.

The Tenant wrote that the Landlord began working in the yard and ripping up the driveway, which caused the Landlord to be at the property all the time. For this reason, they and their daughter did not feel safe and could not use the yard.

In relation to the Tenant's claim for 30% loss of use, the following evidence was provided.

The Tenant wrote that a sewer line was exposed in their closet and it was never covered again, resulting in having to put their clothes on their bed and sleeping on the couch.

During the hearing, the advocate referred to the Tenant's evidence and submitted that they did not think it was necessary for the Tenant to vacate the rental unit while work to repair the water damage was ongoing. Further, after the initial attempts, no further remediation work was attempted.

The Tenant's advocates proposed to the Landlord in a letter of June 30, 2023 that since the restoration company did not complete their work on June 23, 2023, that they establish a new time for remediation work to be done and the Landlord did not respond. On August 9, 2023, the advocate's office proposed to the Landlord that in order for the Tenant to vacate, the Landlord should provide alternate accommodation and storage for the duration of the restoration work, but the Landlord did not respond.

Instead, according to the Tenant's evidence, the Landlord sought to evict the Tenant multiple times, all without success until they finally received an order of possession of the rental unit for renovations and repairs, effective June 30, 2024.

In relation to the Tenant's claim for 75% loss of quiet enjoyment, the following evidence was provided.

The advocate questioned the Tenant, who testified that the Landlord kept yelling at them and wanted them gone. They were not able to use the backyard and they could not take the Landlord's ranting and yelling due to their PTSD. The Tenant stated the Landlord said they hoped the Tenant got hurt and hoped they died.

Further, the constant eviction attempts put stress on them and their 17 year old daughter. Their daughter wanted to have friends over, but did not feel like they could. The Tenant pointed out that 3 of 4 arbitrators in previous disputes determined that the Tenant should not be evicted.

In response to my question, the Tenant said that the Landlord would be on the property 3 or 4 times a week and sometimes the Landlord would not be on the property.

The Tenant said they would never know when the Landlord was coming to the property.

The Tenant and advocate confirmed that the three components of their claim for loss of quiet enjoyment was due to the eviction notices, harassment, and the driveway issue, which lasted 6 months.

Landlord and Counsel's response to the Tenant's application

Counsel argued that the Tenant was seeking 105% of their monthly rent paid for a year, even though they remained in the rental unit the full year and did not ask for aggravated damages. Further, Counsel argued that there was no evidence to show a loss of value of 75%.

Counsel challenged the Tenant's claim of mitigating their claim by asking the Landlord to pay for their alternate accommodation. Further, the Landlord provided notice each time they entered the property and the entries were for a reasonable purpose.

The Landlord said that the whole situation has been a nightmare for them and the Tenant has been reckless with their property and their only motivation in issuing the notices to end the tenancy was to preserve their property from the mould damage. Although there was a hearing in February 2024 for their request for an order of possession for renovation and repairs, the issues began in July 2023.

Counsel submitted that they did not refuse to make any repairs, but that the Landlord could not make repairs until the rental unit was vacated by the Tenant.

Counsel argued that as to the Tenant's claim for 30% loss of use, the Landlord only asked the Tenant to remove things from their closet one time, and this was only for a couple of hours. The Tenant never lost any use of their rental unit or facilities.

Also the claim of loss of quiet enjoyment of 75%, Counsel submitted that the Landlord did not abuse or harass the Tenant or their daughter, but they did have a difficult relationship with each other after the flood. Further, the driveway was not part of the Tenant's agreement and was for use by the upper tenant and all work was safe and necessary and conducted within normal business hours. Counsel submitted that on September 22, 2023, the Tenant prevented crucial work on the property, which was the second time the Tenant prevented work on the property.

All notices to enter were properly issued and that they only asked the Tenant to remove their belongings for a short period of time so that necessary work could be done on the sewer line to mitigate further damage and the inconvenience was temporary.

Counsel submitted that the Tenant was only willing to accommodate the Landlord's remediation work if the Landlord paid for alternate housing, which is not required by the Act.

Landlord's application

The Landlord's monetary claim was described in a monetary order worksheet filed with their application as follows:

1. Landlord's labour-$17,500
2. Unpaid utility charges-$164.02
3. Damage repair-$3845.47
4. Flooring-$3813.60

5. Paint-$1201.57
6. Remediation-$1024.38
7. Underlay-$733.00
8. Drywall repair-$147.50
9. Pet damage (screens)-$197.12

The Landlord totalled the amount to be $25,887.17 less an insurance payout of $15,178.12, leaving a total claim of $10,873.07, according to the monetary order worksheet.

The Landlord filed a written submission and an evidence package.

Counsel, in referring to their evidence and written submission submitted the following:

All started on June 14, 2023, when the Tenant reported a flood in the rental unit due to a leak in the hot water tank, and the Landlord responded quickly. OnSide restoration attended the rental unit the next day and set up three dehumidifiers in the hall closet, utility area and dining room to prevent further damage. The Landlord notified the Tenant on June 20, 2023, that OnSide would be returning on June 23, 2023 between 8:00 and 9:00 am to begin remediation and to have everything out of the living room except for the heavy couch.

Counsel submitted that on June 23, 2023, OnSide attended, knocked on the door and there was no response. The workers entered and announced their presence and upon entering, found the Tenant unconscious in the living room and the items were not moved. There was a smell of alcohol. According to OnSide's report, they were unable to complete the work due to safety concerns and insurance limitations. OnSide further said that if the contents were not removed in a timely fashion, mold may occur which may affect the health of the occupants and the condition of the property. This resulted in the Landlord filing an application with the RTB for an emergency order of possession, which was not successful. The Decision of another arbitrator was filed in evidence.

Onside returned to the rental unit on July 13, 2023, for what the Landlord assumed was more remediation work, but instead they completed structural drying readings, reporting to the Landlord on July 14, 2023, that further testing should be done. The Landlord said that they were told by OnSide by telephone they would not return to the site until the Tenant‘s belongings were removed and that the Tenant must vacate. The Landlord submitted they attempted to talk OnSide into returning, without success.

On August 9, 2023, the Tenant's advocate wrote the Landlord and acknowledged the suite needed to be vacant and requested that the Landlord pay for the alternate accommodation.

On August 28, 2023, as OnSide refused to return to the rental unit, a new restoration company (Smartway) attended the rental unit to inspect for mold. The new restoration company found significant mold growth in the rental unit and if left untreated, mold growth would continue.

On September 25, 2023, Smartway provided a report that the rental unit must be unoccupied during remediation and repairs, which would take two months to complete. Following this, the Landlord issued the Tenant a One Month Notice to end the tenancy for cause, which Counsel asserts was the Landlord's attempt to minimize their loss. On October 19, 2023, the Landlord was notified by their insurer that mold-related damage due to neglected maintenance would not be covered by their insurance policy. In October 2023, the Landlord made an offer to the Tenant of compensation equal to two months rent, which was rejected by the Tenant's counsel.

On December 13, 2023, the Landlord applied for an order of possession for renovation and repair, which was heard by the RTB on February 12, 2024, resulting in an order of possession of the rental unit effective June 30, 2024.

After receiving vacant possession of the rental unit, more remediation work was required as it had been a year since the flood with no remediation work being done. An estimate for a private repair for damage from Smartway and the estimate increased from OnSide's original estimate of $9,700.13 to $19,998.14 as remediation was no longer an option.

In relation to the other damage claim, the Landlord submitted that the Tenant, their guests and the Tenant's pet caused additional damage, including pet scratches on the walls, damaged screens, broken fridge drawers, stripped paint from the removal of strip lighting and damaged floor. A private estimate from Smartway was $3845.47.

Further, the Landlord seeks $164.02 in unpaid utility charges as required by the written tenancy agreement addendum.

The Landlord confirmed that they made the repairs and the actual costs were $25,887.17. Their labour was assessed at $50 per hour for 350 hours over two months and material costs.

Tenant's response

To start their response, the Tenant's advocate cross-examined the Landlord.

The advocate asked the Landlord if they were reimbursed for the claim and the Landlord said they received a payout from the insurance company of $15,178.

The advocate asked the Landlord was the payout for labour costs and the Landlord said yes and no, stating that the repair was $9700 based on an estimate.

The advocate asked the Landlord if they offered the Tenant a rent reduction and the Landlord said no, because the companies refused to do the work until the rental unit was vacant.

The advocate submitted that the Landlord has not provided evidence of what the rental unit looked like before the tenancy began. The Landlord had the opportunity to claim against the security deposit and pet damage deposit, but chose to return them rather than file an application for damage.

As to the larger claim, the advocate submitted that the Landlord has not shown a breach of the Act by the Tenant and has not shown a loss proving the amount, pointing out the Landlord provided estimates, but they did the work themselves.

The advocate submitted that the Landlord did not provide evidence of the work they claimed was done, or what it looked like later on. Further, the Landlord's evidence at page 122 shows the insurance company was prepared to pay the Landlord compensation for their personal work done at the rate of $20 per hour and no evidence was submitted that showed $50 per hour was reasonable.

The Tenant's evidence shows that the Landlord has not taken reasonable steps to minimize their loss as the Tenant through their advocate's office reached out to arrange a new date for the contractors to return to the rental unit. The advocate said the Tenant gave three opportunities to arrange a time and date and the Landlord's eviction

attempts were not a reasonable step to address the issues. The advocate said the Landlord did not engage with the Tenant to arrange a date and time.

The advocate argued that the Landlord did not provide a reasonable solution and did not try to accommodate the Tenant and the Landlord's ultimate goal was to evict the Tenant.

The advocate submitted that no matter what happened on June 23, 2023, the Tenant acted quickly to accommodate the Landlord.

The advocate argued that the Landlord did not mitigate their damage and that the OnSide letters did not show that the rental unit needed to be vacant.

The Tenant testified and said that it was not possible to move out sooner, but they wanted to. The Tenant said they are tired of being accused of being an alcoholic and just wants this to be over.

As to the pet damage, the Tenant said they showed the floor buckled. The Tenant submitted they did clean the refrigerator and the drawer was already broken.

In rebuttal, Counsel said they met the four part test for damages or loss, as the rental unit was left in disrepair, there was an estimate of time and although there was an insurance payout, there was a shortfall. The Tenant's own timeline showed the Tenant got the notice and that vacancy was required, and the Landlord tried to make that happen. The need for vacant possession was proven when the Landlord received an order of possession of the rental unit.

The Landlord said that when the Tenant was found unconscious, OnSide was not able to proceed with repairs and they refused to come back. The Landlord's evidence at page 129 shows the finished product and believed $50 an hour was a reasonable rate.

In rebuttal, the advocate said that early on, the Tenant was not required to vacate the rental unit. The Tenant was not drunk when OnSide tried to access the rental unit, they were tired from not sleeping due to the noise of the dehumidifier.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, meaning more likely than not, I find as follows.

There is little doubt that the parties' landlord-tenant relationship was acrimonious for at least the last year of the tenancy. The parties were in numerous dispute resolution proceedings from April 2023 through February 12, 2024, on the various attempts by the Landlord to end the tenancy. The February 12, 2024, resulted in the Landlord being granted an order of possession of the rental unit for renovations and repairs, with an effective date of June 30, 2024.

Having reviewed the past disputes, it appears that much of the evidence for these two disputes has appeared in evidence in prior disputes. However, I find these particular claims have not been decided upon by another arbitrator. The Tenant claims a previous monetary claim by the Landlord was dismissed, but I find this claim predated the flood of June 14, 2023, and was withdrawn prior to a decision being made.

From my reading of the applications and evidence, the claims of the parties originated on June 14, 2023, when the hot water tank broke and began leaking, creating a water situation in the rental unit.

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Tenant's application

The Tenant's application is comprised of two components, which together amounts to 105% of their monthly rent paid for a year.

The Tenant seeks 30% of the monthly rent for 12 months for loss of facilities. The Tenant seeks 75% of the monthly rent for loss of quiet enjoyment, with the assertion that the harassment of the Landlord caused the Tenant to have constant anxiety.

In considering the Tenant's claim as a whole, I find the Tenant has asked for an amount without providing sufficient particulars of the breakdown of the two components. For instance, in the Tenant's claim for loss of facilities, I find the Tenant has not described a loss of a facility as defined by section 1 of the Act, rather they Tenant claims part of the rental unit was inaccessible due to the Landlord's refusal to complete repairs.

Under Tenancy Policy Guideline 6, this claim would be appropriate in a loss of use of a portion of the property. This Guideline states as follows:

> *A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.*

In considering the request for loss of use, I find the Tenant simply asks for 30%, without explanation why they chose this amount. For instance, the Tenant did not designate what areas were inaccessible altogether, and what that percentage was in relation to the total square footage or how long they were unable to use that part of the rental unit.

The duty to minimize the loss begins when the party claiming for damages or loss becomes aware that damages are occurring.

In this case, I find the Tenant failed to mitigate their loss or damages, by failing to vacate the rental unit to allow for repairs. The Tenant was clearly aware of the need for the rental unit to be vacant by August 9, 2023, as noted in the advocate's letter to the Landlord acknowledging the same. I find the flood caused by the hot water tank breaking was unforeseen and therefore not the responsibility of the Landlord to pay for alternate accommodation. Notably, this letter of August 9, 2023, conflicted with the Tenant's testimony in the hearing on February 12, 2024, for the Landlord's successful application for an order of possession for renovations and repairs, as noted in the RTB Decision of February 13, 2024, where the Tenant stated that only half the rental unit was damaged and that they were able to live in other parts of the unit. The August 9, 2023, letter from the advocate also conflicted with the oral submissions made in this dispute.

Tenant's insurance generally covers damages or losses a tenant may incur as a result of an unforeseen events at the residential property. Damage to a tenant's property or other losses, other than the loss of use of the rental unit, are not the responsibility of the landlord unless the landlord has been negligent in the duty owed to the tenant. In this case, I find the Landlord was not negligent as the evidence points to the fact the Landlord contacted a restoration company quickly, who then in turn installed three dehumidifiers. Further, the Tenant was provided notice on June 20, 2023, of the entry by the restoration company on June 23, 2023, to begin working on the rental unit, however, the Tenant failed to move their furniture to prepare for the work or waking up when the contractors attended, resulting in the work not being done.

As the Tenant failed to have tenant insurance, failed to vacate the rental unit when they knew at least by August 9, 2023 it was necessary, or move their furniture as requested for the June 23, 2023 attendance by OnSide, I find the Tenant failed to do whatever was reasonable to minimize their loss. Further, the Tenant never filed for dispute resolution with the RTB, which allowed their claim to build and grow.

For these reasons, I find the Tenant submitted insufficient evidence that they did whatever was reasonable to mitigate their loss, and I dismiss their claim of 30% of their monthly rent for 12 months, without leave to reapply.

As to the Tenant's claim of 75% of their monthly rent for 12 months for loss of quiet enjoyment, section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

I agree that the Landlord attempted to end the tenancy multiple times, until they were successful in their application for an order of possession for renovations and repairs. I find the Tenant submitted insufficient evidence that these attempts breached the Act, as a Landlord is entitled to seek to end a tenancy for various reasons. I find the attempted eviction is not required to be successful, only that it was lawfully done. I also find there was not an excessive amount of attempts under the circumstances, as I find it reasonable the Landlord sought to preserve the rental unit when the Tenant failed to vacate as noted above.

Another component of the loss of quiet enjoyment claim was for the time where the Landlord worked on the driveway. I find the Tenant submitted insufficient evidence of how work on the outside of the home impacted their quiet enjoyment. The driveway was not part of the Tenant's tenancy agreement and I find the Tenant did not provide a convincing range of time. Although the Tenant sought compensation for 12 months, the Tenant said that the work took 6 months and the Landlord submitted the work was for a few weeks. Temporary inconvenience is not sufficient to establish a loss of quiet enjoyment.

To address the third component of the Tenant's claim for alleged harassment causing anxiety, I find that there was insufficient evidence to support that the Landlord caused the Tenant to suffer any psychological harm or details of the impact on their daily life. I would expect the tenant at the very least to have produced a doctor's report or other explanation to substantiate her condition.

I find the Tenant did not give a description of how the anxiety impacted their daily life, for what amount of time or length of time, medical or psychological records that shows their symptoms.

Further, I have reviewed the police records and find that although police were called to the rental unit at least two occasions, the police investigated the incidents, and no further action was required.

Overall, while the Tenant filed a considerable amount of documentary evidence, some from past disputes, I find the Tenant failed to provide an explanation how they arrived at a claim of 75% for rent for a year and for what time period.

In my view, the Tenant simply gave a number they wanted to be awarded, even though they stayed in, and had use of the rental unit for the full year.

Further, as already noted, the Tenant did not file an application with the RTB to address these claimed issues which they said were ongoing for 12 months, which I find is a failure to take reasonable steps to minimize their loss.

For these reasons, I find the Tenant submitted insufficient evidence to support their claim. I dismiss the Tenant's application in full, without leave to reapply.

Landlord's application

Section 37 of the Act states that when a Tenant vacates the rental unit, they must leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear.

Reasonable wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In assessing the Landlord's individual claims listed on the monetary order worksheet, the assessment was made more confusing as I find some of the claims were commingled with alleged damage resulting from the flood and some alleged damage associated with the Tenant's actions during the tenancy and did not align to the individual amounts listed in their application. Further, two of the items listed on the monetary order worksheet were not used in the total calculation, and not made clear that was the case. Those two items were unpaid utility charges and a restoration company's estimate for repair for $3845.47.

For instance, in the Landlord's written submission, the claim is summarized as "*actual costs for repairing the suite due to the flood damage, resulting in mold growth, and to repair the damage caused by the Tenant*".

The written submission then states the total amount for materials the Landlord purchased was $8387.17 and labour costs of $17,500, or $50 per hour for 350 hours based on the restoration company's estimates of private repairs, as the Landlord did most of the work.

The monetary order worksheet then breaks down the claims in total, with the exclusion of an estimate for damage repair in the amount of $3,845.47 plus unpaid utility charges of $164.02, and then deducts the insurance payout of $15,178.12. This leads me to conclude that the insurance payout was to be used in awarding the additional compensation to the Landlord, if any, whether to repair or to deal with the mold growth issue or pet related damage.

In considering the monetary claim altogether, I find the Landlord has been fully compensated for the materials of $8,387.17 through the insurance payout of $15,178.12.

The remaining part of the claim, apart from the unpaid utility charges, is $17,500 for the Landlord's personal labour for 350 hours at $50 per hour.

I find this claim excessive. The claim was based on two estimates for private repair listing the scope of work provided by a restoration company. On the larger estimate, the restoration company listed their work at $60 to $65 per hour. However, I find it is not reasonable to award the Landlord the costs of their personal labour at $50 per hour when their claim is based upon a restoration company's estimate. A restoration company accounts for employee salaries, overhead, taxes, business/operating expenses, etc.

The Landlord's insurance company offered to compensate the Landlord at $20 per hour and I find this rate is reasonable under the circumstances described.

I find the claim of 350 hours is unsupported by time records. The Landlord submitted that the repair work took two months, however, the Landlord said they were a fireman and worked on their days off. I therefore find the Landlord submitted insufficient evidence that the repair work took 350 hours. I find it more reasonable to find the repair work took 250 hours.

For this reason, I find the Landlord's compensation for their labour is awarded in the amount of $5000, or $20 per hour for 250 hours.

As the remaining balance of the insurance payout of $15,178.12 after deducting the materials costs of $8387.17 is $6790.95, I find the Landlord has been fully compensated for their personal labour.

Unpaid utilities

The written tenancy agreement requires the Tenant to pay 50% of the City's utility bill. I find the Landlord submitted sufficient evidence that the Tenant owes outstanding unpaid utility charges for $164.02 for the time period ending on June 30, 2024. I grant the Landlord a monetary award $164.02.

Filing fee

The Landlord was minimally successful with their claim and for this reason, along with the insufficient evidence that the Landlord tried to collect the unpaid utilities prior to making their claim, I grant the Landlord half of their filing fee, or $50.

I grant the Landlord a monetary order under section 67 of the Act in the amount of $214.02, or $164.02 for unpaid utilities and $50 for partial recovery of the filing fee.

The Landlord is provided with a Monetary Order (Order) in the above terms and the Tenant must be served with this Order if enforcement is necessary. Should the Tenant fail to comply with this Order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

I note that although the Tenant's advocate argued that there was no proof of the condition at the rental unit at the beginning of the tenancy, which is typically shown through move-in condition inspection reports (CIR), I find in these circumstances it was not necessary to consider whether the Landlord complied with sections 23 and 35 of the Act, as that issue was not relevant for the purposes of this Decision.

Conclusion

The Tenant's application is dismissed, without leave to reapply, due to insufficient evidence.

The Landlord's application for monetary compensation is granted in a minimal amount and they have been awarded a monetary order in the amount of **$214.02**.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 12, 2025

Residential Tenancy Branch